

### **REMARKS**

Applicants respectfully request reconsideration and continued examination of this application in view of the above amendment and the following remarks.

#### **1. Status of the Claims**

Claims 1-38 are pending. Claims 1, 2, 21 and 38 have been amended to more precisely point out the applicant's invention. Support for the phrase "smooth corners" is found in the figures and paragraph 9 of the published application. No new matter is added.

#### **2. 35 U.S.C. § 103(a) Rejections of Claims 1-9, 32-34**

Claims 1-5, 9, and 32-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,222,615 to Ota et al ("Ota '615") in view of U.S. Patent Nos. 5,092,474 to Leigner ("Leigner"), 5,762,221 to Tobias et al ("Tobias") and 6,044,997 to Ogg ("Ogg"), further in view of U.S. Patent Nos. 4,749,092 to Sugiura et al ("Sugiura"), 5,238,129 to Ota et al ("Ota '129"), 5,740,934 to Brady ("Brady"), 4,877,141 to Hayashi ("Hayashi") and 3,923,178 to Welker ("Welker"). Claims 6-8 were rejected as being unpatentable for the reasons given for claim 1 and further in view of US Patent No. 6,554,146 to De Groff et al ("De Groff").

Claim 1, the independent claim upon which claims 2-9 and 32-34 depend, recites that the body of the "hot filled plastic container" "consists essentially of" "flat" panel sections and "smooth corners." None of the cited patents teach or suggest such limitations. Ota '615 and Ota '129 disclose bottles with corners, collapse panels, and ribs. Leigner discloses a plastic jar with recessed collapse panels and an integral frame around each collapse panel. see col. 2, Ins. 52-55. Tobias discloses bottles with a round body having lands comprising ribs and panels. Ogg discloses bottles with recessed vacuum panels with ribs.

Sugiura does not teach, suggest, or disclose the claimed invention. Sugiura discloses a bottle whose body includes a separate label area, eight sides, and eight

corners. Thus, Sugiura does not disclose, teach or suggest a bottle whose body consists essentially of corners and flat and flexible panels.

Similarly Brady discloses a bottle having a central section for the label, flutes, and valleys. Col. 3, Ins. 26-28. Moreover Brady discloses a bottle for use with carbonated beverages, not a "hot filled plastic container." Brady does not inherently suggest hot filling, because carbonated beverages are cold filled.

Hayashi teaches against smooth sides. Col. 2, Ins. 50-53. Moreover, Hayashi teaches bottles having recessed panels with raised vertexes. It does not disclose a bottle whose body consists essentially of corners and flat and flexible panels.

Welker discloses a bottle with eight sides. The bottle is designed to allow moisture to migrate out of the packaging. Four of the sides are designed to absorb vacuum by flexing inwards while the other four sides resist flexing. Col. 1, Ins 40-50; col. 2, Ins. 48-53. Thus, Welker teaches against the invention because half of the sides are designed not to flex between a bowed and a planar configuration. Also Welker does not appear to disclose a hot filled container. For example, it never discloses hot filling and it never discusses bowing due to temperature change. Instead, it discloses bowing due to vapor transmission. Thus, Welker teaches against the invention and does not teach or suggest that hot filled plastic containers can be made without ribs, indents, and other structures on the body of the bottle.

Thus, none of the cited references, alone or in combination, disclose, teach or suggest a "hot filled plastic container" "consists essentially of" "flat" panel sections and "smooth corners." Thus, claim 1 is patentable. Because claims 2-9 and 32-34 depend on claim 1, they are also patentable.

Claim 3 recites "the plastic container of claim 1 wherein said body portion has no ribs, no stress absorbing strips, no raised areas and no recessed areas." Even if claim 1 is not patentable, claim 3 is patentable because the body of Ota '615, Tobias, Leigner, Ota '129, Ogg and Hayashi have ribs, stress absorbing strips, raised areas, or recessed areas.

Claim 4 recites "the plastic container of claim 1 further comprising a label engaging said panel sections." Even if claim 1 is not patentable, claim 4 is patentable. In Ota '615, Leigner, Tobias, Ogg, Ota '129, and Hayashi the collapse or vacuum

panels are recessed versus the side of the bottle and the ribs. Thus, the labels would not be engaged with these recessed panels. Moreover, Tobias and Ogg explicitly indicate that their bottles have a lower label bumper and an upper label bumper for affixing labels that are raised relative to the recessed panels. Tobias, col. 3 ln. 67 – col. 4, ln. 2; Ogg, col. 3, lns. 1-2. Ota '615, Leigner, Ota '129, and Hayashi also appear to have label bumpers in addition to any flat panels.

In addition, Sugiura and Brady have separate label areas. Moreover, Sugiura, the only patent among Sugiura and Brady to disclose a hot fillable plastic container, teaches away from claim 4. In particular, Sugiura states “[I]f the deformation occurs in the vicinity of attachment of a label to the bottle, the appearance of the label is also adversely affected.” Sugiura, Col. 1, lns. 34-36. Not surprisingly, the label area of Sugiura is cylindrical, without flat sides as required by the claims. Sugiura, col. 2, lns. 11-14.

Welker does not disclose the location of any labels. However, Welker does not disclose a hot filled plastic container. Thus, claim 4 is patentable, even if claim 1 is not.

### **3. 35 U.S.C. § 103(a) Rejections of Claims 10-20**

Claims 10-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over 6,554,146 to De Groff et al (“De Groff”) in view of applicant’s admission of prior art, further in view of US Patent Nos. 5,987,901 to Visioli (“Visioli”) and 5,616,353 to Wright et al (“Wright”). Applicant has attached a Declaration Under 37 C.F.R. § 1.131 swearing behind DeGroff’s filing date of January 17, 2002. Applicant respectfully submits that claims 10-20 are also allowable.

### **4. 35 U.S.C. § 103(a) Rejections of Claims 21-31 and 35-37**

The rejection of claims 21-31 and 35-37 as being obvious relies on the separate rejection of claim 10. Because the rejection of claims 10 has been shown above to be improper, Applicant respectfully submits that claims 21-31 and 35-37 are also allowable, because they recite at least those inventive features that are argued above as rendering claim 10 allowable.

**5. New 35 U.S.C. § 103(a) Rejections of Claim 38**

It is respectfully submitted that claim 38 is allowable because the cited references do not disclose, teach or suggest "A hot filled plastic container comprising ... a body portion, generally rectangular in transverse cross section and including four side walls, each of said side walls being flat and flexible, so as to exhibit flexibility to move between a bowed configuration and a planar configuration in response to temperature changes experienced by the container...." For example, the sidewalls of Ota '615, Ota, Leigner, Tobias, Ogg and Hayashi are not flat.

Sugiura and Welker disclose bottles having eight sides. They do not have a generally rectangular cross-section as required by the claims.

Welker and Brady do not disclose "hot filled plastic containers." Brady discloses a bottle for carbonated beverages. Welker discloses a bottle that flexes under vacuum as moisture migrates out of the packaging. Neither ever discloses hot filling. Thus, neither addresses the issues unique to hot filling, namely, positive pressure and hot temperatures during filling and vacuums that occur during storage. Welker and Brady show, at most, that it would have been obvious to try to use flat side walls in a hot filled container.

Thus, none of the cited references, alone or in combination, disclose, teach or suggest a "hot filled plastic container" having a "generally rectangular" "body portion" with "four flat sidewalls." Thus, claim 38 is patentable.

**CONCLUSION**

In view of the foregoing, reconsideration and withdrawal of the outstanding rejections are respectfully requested and an indication of allowable subject matter is earnestly solicited

Respectfully submitted,

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